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MOLESTATION: A CRITICAL ENQUIRY*

ABSTRACT

Molestation means to touch or attack someone in a sexual way against their wishes. The term Molestation is used for situations when a woman's modesty is at risk. The word "modesty" is not something that's defined legally as such in the Indian Penal Code. In cases where the accused molests or insults the modesty of a woman by way of obscene acts or by means of words, gesture, or acts that are intended to insult the modesty and dignity of a woman, he shall be punished under the following sections. Sec.294 of IPC, Section 509 of IPC, Section 354 of the IPC, Section 323 of the IPC.

Molestation , depends on the circumstances and case to case. Punishment also depends after getting invoked specific clause of the same section. On an average punishments (1-7 years of imprisonment.) Now, the question arises why Indian women are being traumatized at every step of her life whether it is outside home or inside home?

In India there are various constitutional and legal provisions which ensure equality as well as empowerment of women. And for this purpose various suitable economic policies and social welfare programmes for women has been launched from time to time. But still, India fails to achieve the desired results.

This study will provides a detailed overview of topic, attempt to understand the perception of women in society and understanding of women regarding various rights and laws. This paper suggests measures for effective programme and policies for awareness about laws, rights and policies among women at grass root level.

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Introduction: The term **Molestation** is used for situations when a woman’s “modesty” is at risk. The word “modesty” is not something that’s defined legally as such in the Indian Penal Code. One can only rely on Dictionary meanings of the term. The Shorter Oxford English Dictionary defines the word “modest” about a woman as follows: “Decorous in manner and conduct; not forward or lewd; shamefast.”¹

“Modesty” is defined as the quality of being modest, and in relation to a woman, dictionaries define it as “womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct.” “Modesty,” therefore, has some relation to the sense of propriety of behaviour in relation to the woman against whom the offence is said to have been committed. It refers to cases where an individual insults the modesty of a woman by way of lewd acts or using words, gesture, or acts that are intended to insult the modesty and dignity of a woman.² Further the molestation can be understood under two heads:

- i. Molestation of women;
- ii. Molestation of children; which can be further understood as: In India, a child is sexually abused every 15 minutes, according to the latest government figures.

The National Crime Records Bureau [report](#), released on Thursday, shows a steady rise in incidents of offences against children. Child sexual abuse has been in focus in recent months after the case of a 10-year-old rape victim who was forced to give birth [hit the headlines](#). Two of her uncles were [sentenced](#) to life in jail for raping her. According to the report on crimes in India for 2016, released by Indian Home Minister Rajnath Singh in Delhi, 106,958 cases of crimes against children were recorded in 2016. Of these, 36,022 cases were recorded under Pocso (Protection of Children from Sexual Offences) Act³.

India is the second most populous country in the world and is a home for 430 million children which means 42% of the total population in India. Out of the entire population of children, 50%

¹ Available at <https://www.nrilegalservices.com/molestation-definition-relevant-laws/> (visited on December 10, 2018).

² Ibid.

³ Available at: https://www.economitimes.indiatimes.com/articleshow/56512369.cms?utm_source=contentinterest&utm_medium=text&utm_campaign=cppst (visited on December 12, 2018).

of the population is under care and protection i.e. the protection from child sexual abuse. Child sexual abuse includes rape, sexual harassment, etc. is a problem which has become a growing concern in India. It is a fact that millions of boys and girls are sexually abused within and outside their homes by relatives or by known persons. In India, children are expected to obey and respect others without questioning their actions. The impact of child sexual abuse is worse in India than in any other country of the world.⁴

Child Sexual Abuse (CSA) is a mental or physical violation of a child with sexual intent, generally by a person who is in the position of power and trust of a child. Apart from the definition, sexual abuse also includes:

Firstly, an adult revealing his/her genital organs to the child and influencing the child to do the same for them i.e. exhibitionism.

Secondly, an adult touches the child's genital organ with hands or with other objects and persuading the child to touch their genitalia i.e. touching and fondling of a child.

Thirdly, an adult having anal, oral and vaginal intercourse with a child with or without penetration i.e. assault which includes rape and sodomy.

Fourthly, an adult is persuading or encouraging a child to hear, read or view any pornographic material.

Fifthly, an adult forcing a child to indulge in any sexual activity.

⁴ **CHILD SEXUAL ABUSE IN DOMESTIC SPHERE**, available at: <https://www.youthkiawaaz.com/2009/05/child-molestation-india/> (visited on December 12, 2018).

Sixthly, an adult marrying a minor, or minor marrying another minor is considered to be a forced relation.

Children are not only the victims of child sexual abuse but are also traumatized by the law because they are unaware of the act itself. Due to the trauma which children are suffering, their future gets jeopardized.

There are very few cases of child sexual abuse which are reported. Other victims do not even share their plight with their parents. The worst part is the feeling of silence and shame which characterizes the cases of sexual abuse amongst children. To overcome the detrimental effects of child sexual abuse, youth must be protected from this harm. It is imperative to capture the perpetrators of the sexual assault against Indian children.⁵

Assault or using criminal force is an offence under section 354 of the Indian Penal Code while insulting the modesty of the woman through words or gestures is an offence under Section 509 of the Code. Some of the examples illustrating acts that amount to outraging the modesty of a woman are as follows:

- Hugging a woman without her consent, kissing her, touching her private parts or any act which is likely to put her to shame by outraging her modesty. Examples of insulting the modesty of the woman are:
- Writing letters using vulgar language.
- Making vulgar gestures
- Displaying vulgar figures
- Singing songs with vulgar suggestions
- Entering a woman's house and making vulgar gestures

⁵ Supranote 5.

• Exhibiting his nude body The offence under section 354 is punishable with imprisonment up to 2 years or fine or both while that under Section 509 is punishable with a simple imprisonment of 1 year or fine or both. Both the offences are cognizable, bailable and compoundable with the permission of the court⁶.

Factors responsible for this evil

1. Presumptions, premonitions and perspectives regarding women in our culture:

- a. The birth of the son celebrated, the birth of a girl is mourned (back up by sharing statistics on female feticide).
- b. Unequal education, nutrition, and living conditions.
- c. Early marrying off into families where these nubile minds are shaped into the same mindset.
- d. Employment of women frowned upon.
- e. Dowry system, which tries to portray whether marrying a girl is actually a great work of charity done in the goodwill of the girl's family.
- f. Women supposed to keep her face covered, her body covered and modern clothing viewed as lewd and 'inviting'. (back up by incidents of speeches by political leaders, supposedly the leaders of country)
- g. Sexual repression. Talks, education, or sexual topics treated as taboo topics, leading to a subculture of lewd cheap erotica, B-grade movies and item numbers which cater to the fantasy of suppressed men⁷.

⁶ Available at: <http://vikaspedia.in/social-welfare/women-and-child-development/women-development-1/molestation> (visited on December 12, 2018).

⁷ CRIMES AGAINST WOMEN LIKE RAPE/MOLESTATION ARE ON A RISE: REASONS & SOLUTIONS, available at: <https://www.career2nextorbit.com/article/299/crimes-against-women-like-rapemolestation-are-on-a-rise-reasons-solutions> (visited on December 12, 2018).

2. **Lack of holistic spiritual and moral education:** The current education system is all about getting a job, making money and satiating your superficial desires with it. No one questions the purpose of life and cares about real human calling.⁸
3. **Few female police:** Studies show that women are more likely to report sex crimes if female police officers are available. India has historically had a much lower percentage of female police officers than other Asian countries. (6.11% of the total police force in India, as of 1st January 2014, as per the data with Bureau of Police Research and Development, Ministry of Home Affairs).⁹
4. **Acceptance of domestic violence:** A 2012 report by UNICEF found that 57 percent of Indian boys and 53 percent of girls between the ages of 15 and 19 think wife-beating is justified¹⁰.
5. **A sluggish court system:** India's court system is painfully slow, in part because of a shortage of judges. According to the data put out by the Law Ministry in public domain, the judge to population ratio in India stands at 17.86 judges per 10 lakh people.¹¹
6. **Execution of Law (Both cause and prevention):** According to the Supreme Court rulings the sale of acid over the counter should be regulated, it should not be sold to anyone who is below the age of 18 years and also without government issued photo ID with residential address and the seller must note down the quantity of acid bought and the reason for buying with punishment of fine of up to Rs. 50,000 for violation. While law is there in place, the sale of acid still goes unabated in several states¹².

Legal Provisions: Molestation has very wide meaning. It depends on the circumstances and case to case. Considering this question a general in nature, it attracts section 354 IPC. Punishment also depends after getting invoked specific clause of the same section. On an average punishments (1–7 years of imprisonment.) e.g

⁸ Ibid.

⁹ Supranote 8.

¹⁰ Supranote 8.

¹¹ Ibid.

¹² Supranote 8.

354 IPC- Assault of criminal force to woman with intent to outrage her modesty—
punishment (1–5 years)

354 A.—Sexual harassment and punishment for sexual harassment- punishment

- A man committing any of the following acts—
 - i. physical contact and advances involving unwelcome and explicit sexual overtures; or
 - ii. a demand or request for sexual favours; or
 - iii. showing pornography against the will of a woman; or
 - iv. making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

2. Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

3. Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both

354B—Assault or use of criminal force to woman with intent to disrobe-

Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

354C —Voyeurism

Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term

which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation I.— For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2.— Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

354D—Stalking

1. Any man who—

- i. follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
- ii. monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

- i. it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
- ii. it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
- iii. in the particular circumstances such conduct was reasonable and justified.

2. Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be

liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.¹³

Legal provisions related to child sexual abuse

Until 2012, there was no appropriate legal framework in India which deals with child sexual abuse. Earlier sex crimes against children were protected by section 354, 375, 377, 509 of Indian Penal Code, 1860. Section 374 deals with rape, Section 509 states any person who intends to insult the modesty of a woman through word, gesture or act and Section 377 of the IPC deals with unnatural offence. The pornography was dealt with Young Persons (Harmful Publication) Act, 1956. In the year 2012, the Parliament of India has passed the Protection of Children against Sexual Offences Act (POSCO) for the victims of child sexual abuse below 18 years of age.¹⁴

Salient features of POSCO Act

Firstly, POSCO Act is gender neutral. The consent of the child is immaterial under this act. Secondly, this law mandates the reporting and recording of sexual abuse against a child. Section 19(1) of the POSCO Act makes it compulsory to report the offence. Thirdly, this act lists the sexual crimes committed against a child. Section 3 of the POSCO Act states: *“A person is said to commit “penetrative sexual assault” if (a) “he penetrates his penis, to any extent, into the vagina, mouth, urethra, or anus of a child or makes the child to do so with him or any other person”; Since the words “any other person” are used in Section 3(a), women may also be offenders or victims under the second part of Section 3(a)”*.¹⁵ Fourthly, it also provides protection to minors during the judicial process. Fifthly, *“Section 5(j): “Whoever commits penetrative sexual assault on a child, which in the case of female child, makes the child pregnant as a consequence of sexual assault.” However, even in these offences, women can be joined as abettors under Section 16, POSCO Act”*.¹⁶

¹³ Available at: <https://www.quora.com/What-is-the-punishment-for-molestation-under-Indian-law> (visited on December 12, 2018).

¹⁴ available at <https://indiankanoon.org/doc/203036/> (visited on December 12, 2018).

¹⁵ Available at; <http://www.legalservicesindia.com/article/article/crusading-against-child-sexual-abuse-through-law-introspecting-the-posco-1908-1.html> (visited on December 12, 2018).

¹⁶ Ibid.

Provisions of POSCO

- 1) As soon as the matter is reported to the police officer, within 24 hours, the case should be presented before the Child Welfare Committee.
- 2) The statement of the minor should be recorded in his or her home or his or her favorite place only by a female police officer.
- 3) This act also provides a speedy trial and in camera proceedings to ensure confidentiality.
- 4) The minor should not be called in the court repeatedly. He or she may be testified through video from home.
- 5) The medical examination must be conducted by a female doctor, in the presence of a person whom minor trusted. Consent of the parents or guardians if present, otherwise the consent of medical professional on the behalf of a minor is required.
- 6) The defense should route all the question through the judge and cannot ask any aggressive or character assassination questions to the juvenile.
- 7) The minor should not be exposed to accused in any way during the recording of evidence¹⁷.

Punishment enumerated under POSCO

1. For penetrative sexual assault, the sentence not less than seven years extended up to life imprisonment along with fine under section 4 of the POSCO Act.
2. Aggravated sexual assault committed by a person of trust or authority like police officer under section 6 would be punished with not less than ten years and extended up to rigorous life incarceration and fine.

¹⁷ Supranote 16.

3. For the non-penetrative sexual assault committed by a person with sexual intent must be punished with not less than three years and extended up to 5 years of imprisonment under section 10 of the POSCO Act.
4. Under section 10, if the aggravated sexual assault is done by the authority or by the person of trust, it would be punished with not less than five years and extended up to seven years of incarceration.
5. For sexual harassment under section 12 of the POSCO Act, prescribes a punishment of 3 years along with fine¹⁸.

“As per section 42 of the POCSO Act, where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code, then notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.”¹⁹

Conclusion

Sexual abuse of a child is veiled in secrecy. It is essential for parents and guardians of the child to get sensitized and understand the degree of the problem. It is also crucial for the parents to create a protective environment for the child and to guide their children how to protect themselves from sexual abuse²⁰.

The ever increasing rate of child molestation in India brings forth a mentality prevalent in the Indian man (or woman, as the case may be). They are of the thought that children are an easy target and can easily be molested and abused in order to get sexual pleasure. The UN stated that in India, the least number of child abuse cases are reported, the reason being the social stigma. The

¹⁸ Supranote 16.

¹⁹ Ibid.

²⁰ Supranote 5.

child and his/her family have to suffer for the rest of their lives, be it because of the emotional and psychological factor or because of the way the society treats them²¹.

Once convinced that “God is the only truth,” Mahatma Gandhi, “*the father of our nation*”, as named by freedom fighter Netaji Subhash Chandra Bose, in the course of his experiments with truth, later came to believe that “There is no god higher than truth.” Gandhi is also quoted to have said: “*Truth alone will endure, all the rest will be swept away before the tide of time.*”

As India is caught in the crest of its #MeToo wave, the moment of truth and reckoning seems to have arrived for many of those who have exerted their position of power — real or perceived — to sexually assault, abuse, harass, and persecute women. The forms are many — physical, verbal, non-verbal, on chat, on text, the list goes on — but there is only one crime — sexual abuse. #MeToo started in October 2017 as a hashtag on social media with women sharing incidents of sexual assault and harassment, especially at the workplace. Over the last year, #MeToo has gained many local and international narratives and become a movement against sexual harassment and sexual assault in general. In India, the #MeToo campaign, triggered in a sense by Tanushree Dutta’s allegations of sexual harassment by veteran actor Nana Patekar, has seen its second resurgence over the last week. Taking the shape of a working woman’s revolution against sexual predators and abusers at the workplace, the movement has so far seen over half a dozen casualties with many more directors, actors, comedians, journalists, authors, and others being named and shamed on social media by hundreds of women.²²

Many entrepreneurs and founders have been named and shamed in the ongoing #MeToo campaign. Amid sexual abuse allegations, AIB co-founder Tanmay Bhat steps down, another co-founder Gursimran Khamba is sent on leave Queen director Vikas Bahl removed from Amazon’s upcoming web series after Kangana Ranaut and other co-actress accuse him of sexual harassment. Men, and sexual criminals, are not limited to the above industries. **The #MeToo movement has now spread to the Indian startup ecosystem**, which is the third-largest in the world. A number

²¹ Anshul Tiwari, CHILD MOLESTATION IN INDIA, available at; <https://www.youthkiawaaz.com/2009/05/child-molestation-india/> (visited on December 12, 2018).

²² [Suprita Anupam](https://www.youthkiawaaz.com/2009/05/child-molestation-india/), WHAT ARE THE LAWS RELATED TO CHILD SEXUAL ABUSE IN INDIA, available at; <https://inc42.com/features/indias-metoo-movement-exposes-sexual-abuse-in-the-startup-ecosystem-in-its-wake/> (visited on December 12, 2018).

of startups, along with some big corporates, have failed to implement the Vishakha Guidelines (1997) or Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. **As per a survey of 600 enterprises, around 40% [didn't have the Act in place](#).** The recent and past exposés of AIB comedian Utsav Chakraborty, [TVF](#) founder Arunabh Kumar, [Scoopwhoop](#) co-founder, investor Mahesh Murthy, and [OML](#) co-founder Vijay Nair only confirms the above finding. Thanks to #MeToo, many of them have had to step down and apologise for their misconduct and crimes. The power of #MeToo unleashed itself over the last couple of days as more women joined the campaign and the heads of more than half a dozen male bosses in different professions rolled. We're sure many more will fall in the near future.²³

Steps for Prevention

- **Building legal awareness:** Sheroes hangout is a café in Agra which is run by acid attack victims.
- **Connect with women's rights groups:** Clothing brand Viva N Diva has signed acid attack victim, Laxmi as their ambassador in 2016; initiatives like these can only bring about a positive change.
- **Demand to know your rights as a woman:** You have a right to know whether your office or college has set up an anti-sexual harassment cell, and the right to demand that it is set up.
- **Execution of Law**
- **Change in mindset:** Another thing which needs to be done in order to put an end to these crimes is through addressing them from a different perspective. Civil society institutions like Non-Governmental organizations (NGOs), Civil Society organizations (CSOs), schools, and churches, family need to step up and try to change the patriarchal mindset of people.
- **Leveraging Cinema in Right Spirit:** Strong & Hard hitting movies like "Pink", "Queen", "Kahaani", "English Vinglish", "Piku", "Mary Kom", "Neerja" can help to change the mindset of the people and how they perceive women and can also help to bring about gender sensitization.

²³ Ibid.

- **Doing away with categorization of cases as per level of brutality:** The gang rape case and murder of a 12-year-old girl, in Kolkata, did not lead to nationwide protests. With this, we see a trend of giving excessive importance to a crime according to its level of brutality which should not be done because each crime is horrifying²⁴.



²⁴ Supranote 8.